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Supreme Court, U.S.
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No. 10-1110

In The Supreme Court of the United States

NATHAN D. CRISP,
Petitioner,
v.
DIANE BESSEN, et al.
Respondents.

On Petition For Writ Of Certiorari
To The United States Supreme Court From
The State of Georgia Supreme Court

PETITIONERS REPLY BRIEF TO THE RESPONSE BRIEF OF THE RESPONDENTS

Nathan Crisp
6121 Creekford Dr.
Lithonia, GA 30058
nathancrisp@yahoo.com
404-933-0806
Pro se Petitioner

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TABLE OF AUTHORITIES

United States Supreme Court Rule 10.
G.A. Constitution Art. 1, Sec. I, Par. XI
O.C.G.A. 9-15-15 (c)
O.C.G.A. 9-15-15 (d)
The 5th, 7th,and 14th Amendments to the United States Constitution
USC 42, Section 1983
Blakely v. Wash., 542 U.S. 296, 305-306 (2004)
Hafer v. Melo, 502 U. S. 21, 25 (112 SC 358, 116 LE2d 301) (1991)
McCarthy v. Holloway, *245 Ga. 710*, 711 (*267 SE2d 4*) (1980), citing Canal Ins. Co. v. Cambron, *240 Ga. 708 (242 SE2d 32) (1978).*
Greene v. Greene, 76 Ga. App. 225 (45 SE2d 713) (1947).
Singleton v. Wulff, 428 U. S. 106, 121, 96, S.Ct 2868 (1976)
Turner v. City of Memphis, 369 U. S. 350 (1962)
Hormel v. Helvering, 312 U.S. at 312 U. S. 557.

REPLY BRIEF

1. Introduction: The Respondents continue to usurp our constitutions and through "eye won't see" supplant law! They won't see written jury trail demands and deny the existence of jury trial rights. They continue the myth of unlimited judicial capacity and power and immunity as they "won't see" that the Constitutions revoke' their judicial capacity in this case. They misrepresent this Petitioner concerning Supreme Court Rule 10 by failing to even mention the actual rule that this Petitioner is appealed under. They make an utterly ridiculous statement that USC 42, Section 1983 and jury trial demands were not asserted when the record is polluted with them. They claim in complete disregard of law that this Petitioners appeal to the G.A. Supreme Court was untimely, when as a matter of law there is no time limit for attacking on its face null and constitutionally prohibited judgments in this case. The Respondents answer is replete with dishonesty!

2. III. 1. A. The Respondents claim that this Petitioner has "utterly failed to assert a cognizable claim under Rule 10." But the Respondents conveniently leave out (omit) the last part of the rule 10c in their argument ("a state court ...has decided an important federal question in a way that conflicts with relevant decisions of this Court.") that does provide a reason for consideration and is this Petitioner's Rule 10 claim. The Respondents argument under rule 10 are irrelevant as this Certiorari was not made under the rules of which they argue and they completely ignore the relevant part of rule 10c.

(a). The Respondents are further in error by claiming that ***Blakely v. Washington, 542 U.S. 296, 124 S. CT. 2531 (2004)*** was improperly relied on and dealt only with criminal cases. ***"Regardless of whether the object of concern is criminal or civil, the right to trial by jury is no mere procedural formality, but a fundamental reservation of power in our constitutional structure." Blakely v. Wash.***

3. III.1. B. The Respondents have stated that this "(Petitioner) did not make a claim (of) lack of jurisdiction." This Petitioner in fact, made the claim of a lack of jurisdiction even before the G.A. courts had made their null judgments – because he knew they would usurp jurisdiction! This Petitioner made this claim on item 6 (page 8a in Respondents appendix) of the original complaint (they just won't see it).

(a). The Respondents continue their myths of judicial immunity and judicial capacity. G.A. Con. Art. 1, Sec. I, Par. XI/7th Amend. revokes judicial capacity when a written jury trial demand is perfected, as in this case. Every case the Respondents referred to in their par. III.1.B. provides immunity only if jurisdiction is also held and all the protections for immunity are vaporized with the loss of judicial capacity. Additionally, O.C.G.A. 9-15-15 (c) revokes judicial immunity completely regardless of capacity!

4. III. 1. C. The Respondents make 2 errors in stating that 7th amendment or USC 42, 1983 claims were not raised and (as a rule) that they can't be used in this Certiorari.

(a). Error 1: But in *Singleton v. Wulff,* 428 U. S. 106, 121, 96, S. Ct 2868 (1976) – This U.S. SUPREME COURT states, *"We announce no general rule. Certainly there are circumstances in which a federal appellate court is justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt, see Turner v. City of Memphis,* 369 U. S. 350 (1962), *or where "injustice might otherwise result." Hormel v. Helvering,* 312 U.S. at 312 U. S. 557.

(b). Error 2: However, and on the contrary to the Respondents ridiculous statement (their eye won't see them), this Petitioner did raise these claims as follows:

(c). This Petitioner made 2 separate, distinct, and undisputed written jury trial demands in paragraphs 1 and 8 of his original complaint (found in Respondents appendix, page 7a and 9a). The written jury trial demand in paragraph 1 meets federal standards and is his 7th amendment demand. In paragraph 8 a jury trial demand is specifically made under G.A. laws and Constitution as they don't have a specific format. Please note, a written jury trial demand is required by both state and federal law; that is why there are two (2) written demands.

(d). This Petitioner refers to both jury trial right(s) in the plural in Part 2. Para. 1 and Part 3. Para. 1 (found in Respondents appendix, page 14a and 15a) before the G.A. Court of Appeals.

(e). This Petitioner in his Petition for Writ of Certiorari before the G.A. Supreme Court (which the Respondents conveniently omit, but included in this

Appendix) refers to: "due process rights and perfected ancient, state, and federal Jury trial rights" in his Brief Part 1 and par. 1 (App. pp.-1-); Federal Jury 7th amendment rights are referenced in Part 2, The State Court of Fulton County in paragraphs 1. (e.), and (g) (App. pp. -4-); Part 2 - The State Court of Fulton County in paragraphs 1, (App. pp.-5-) 5 (b), (App. pp.-7-) 6 and 7(App. pp. -10-); and Part 2 - The Court of Appeals in paragraph 2.(3) (App. pp.-12-).

(f.) Yes, this Petitioner make a claim for USC 42, Section 1983 under the O.C.G.A. 9-15-15 (d). O.C.G.A. 9-15-15 (d) is the state law that enforces USC 42 Section 1983. Paragraph 1 of Petitioners original complaint covers the Federal claims. In par. 1; "Objection to Superior Court Judge Making Illegal Judgment Under O.C.G.A. 9-15-15 (d)." O.C.G.A. 9-15-15 (d) makes it illegal for a frivolity review in 3 instances: quo warranto, mandamus, and USC Title 42, Section 1983. It is obvious that quo warranto and mandamus do not apply in this case. That leaves only USC Title 42, Section 1983. The federal jury trial demand was made above the objection which asserts Section 1983. Both issues were Federal!

(g). Additionally, This Petitioner in his Petitions before the G.A. Appeals and Supreme Court also referred to USC 42, Section 1983 multiple times: Part 2, The State Court of Fulton County, par. 1. (a) (app. pp. -3-), (g) (2) (app. pp. -5-); Part 2, The Superior Court of Fulton County par. 1 (app. pp. -5-), 5.(a) (app. pp. -7-), 5. (b) (app. pp. -7-), 5. (e)(2) (app. pp. -8-); Part 2, The Court of Appeals par. 2 (3) (app. pp. -14-), and 2(8) (app. pp. -15-).

(h). However, this is the very 1st time the Respondents have claimed that the 7th amend./USC 42, Section 1983 were not raised. The Respondents made answers to both the G.A. Appeals and Supreme Courts and did not once protest at this Petitioner's use of those claims. They simply pretended the claims don't exist or said they can violate them! The G.A. judiciary simply agreed! Following the Respondents own arguments in par. III.1.c. they are prohibited (under the same laws they sought to prohibit this Petitioner) from raising their "eye won't see" new issue now.

(i). Yes, there were rulings by the Appeals/Supreme Courts of G.A. and yes, the jury trial/USC 42, Section 1883 is clearly in the record. Yet, somehow this case did not receive the required jury trial. The G.A. Courts (like the Respondents) were also suffering from eye won't see the jury/USC claims too and used state laws to deprive federal rights.

(j). While it is true that the 14th amendment has not been held applicable to the states regarding civil jury trial rights, however 5th/14th amendment due process rights have been! The Respondents in the process of depriving the state rights of a jury trial (a due process right itself) resulted in a federal due process depravation - The right to be free of judge's judgments when a written jury trial demand is made (G.A. Constitution Art. 1, Sec. I, Par. XI) which also results in a deprivation of 5th/14th amendment rights as were found applicable upon the states. Additional due process rights deprivations by the Respondents and G.A. judiciary are listed in detail in the Certiorari before this U.S. SUPREME COURT.

5. Summary: The Respondents have changed their story several times with 3 matching confessions:

(a). The First Confession: The Respondents answer to the State Court of Fulton County, (which they also omit from their Appendix) confess that they won't even see jury trial claims that clearly appear in the record. – "As to Plaintiffs claims that he made written demand for a jury trial and did not waive such demand, Defendants are without knowledge or information sufficient to form a belief as to the truth of those averments." Answer of the Defendants Bessen, Porter, and Thompson, Fifth Defense, Item 4. Whereas, the entire G.A. judiciary pretended that they could not see them either and made judgments under state law depriving Federal rights!

(b). The Second Confession: The Respondents in their statement that the Appeals/Supreme Court of G.A. could not address the Jury trial and USC 42, Section 1983 claims because this Petitioner did not raise them is a desperate lie! The attached Appendix or paragraphs 4(e) and 4(g) above prove otherwise. Now before this U.S. SUPREME COURT the Respondents confess that their "eye won't see" the Jury or USC claims clearly appearing in the record! Hey selective blindness worked in the G.A. Judiciary!

(c). The Third Confession: The Respondents did not even specifically mention any jury trial rights at all until this case reached the G.A. Supreme Court – There they finally admitted that jury trial rights are involved, but it's OK because they had unlimited power to violate jury trial rights.

"Because the issuance of <u>*any*</u> (including null, void, lacking jurisdiction, and constitutionally prohibited) *judgment by a* <u>*state*</u> *court judge resulting in* <u>*deprivation*</u> *of a* <u>*litigant's right to trial by jury*</u> *would constitute an act taken in that judge's* <u>*judicial capacity*</u>*..."* Response to the Appellant's Petition for Writ of Certiorari, page 7, lines 12-14. The G.A. judiciary simply agreed with them!

(d). Their Section 1983 confession was intended to secure a position where only injunctive relief could be issued against them and not a civil suit in case this case went Federal. However, this Petitioner did not sue the Respondents under USC 42, Section 1983 as judicial officers, but as state actors because of their complete lack of judicial capacity.

(e). An injunction is needed under USC 42, Section 1983 to protect jury trial and due process rights from further deprivations by the G.A. judiciary involving this case.

(f). <u>I Won't See Conspiracy</u>: The Respondents usurp jurisdiction where prohibited by the Constitutions because they won't see (like the jury/USC 42 claims) such constitutional limits on their capacity. The G.A. judiciary simply won't see it either!

<u>6. Conclusion</u>: The Respondents refusal to see the Jury/USC claims clearly appearing in the record – then accuse this Petitioner of not raising these claims!!!??? The Respondents failed to object even once to this Petitioners use of these Federal claims, because they won't see them. Since they won't see them how can they object too them? This juvenile

behavior is simple dishonestly! The Respondents and G.A. judiciaries "eye" problem are reason enough for this Supreme Court to exercise its' supervisory powers and restore the rule of law to the Georgia judiciary!

(a). If this U.S. SUPREME COURT will not act; it will embolden the G.A. judiciary with the myth of unlimited power and they will deprive other persons of their rights!

(b). This SUPREME COURT can restore the rule of law by simply mandating that a jury trial be provided in the Fulton County State Court of Georgia and let "We The People" take it from there!

APPENDIX

THE SUPREME COURT
STATE OF GEORGIA

State Courts Civil Action File # 08EV005601D
Superior Courts Civil Action File # 2009CV165764
Appeals Court Case # A09A2265
G.A Supreme Court Case # S10C1572

Nathan Crisp]
6121 Creekford Dr.]
Lithonia, GA 30058]
nathancrisp@yahoo.com]
404-933-0806]
Pro se Petitioner]
v.]
Diane Bessen , et al.]
Respondents]

PETITION FOR WRIT OF CERTIORARI

BRIEF
PART 1

1. Now Comes Petitioner, Pro se, Nathan Crisp hereby files his appeal to enforce his due process rights and perfected ancient, state, and federal Jury trial rights lawfully demanded, that are not waved.
2. The Georgia Supreme Court has jurisdiction, as The Supreme Court may review by certiorari cases in the Court of Appeals which are of gravity or great public importance - GA Const. Art. 6, Sec. VI, Par. V. And in cases regarding the Constitution of the State of Georgia and of the United States Constitution - GA Const. Art. 6, Sec. VI, Par.II (1).

3. This writ of certiorari is filed in excess of 20 days of the Appeals Court's Judgment. However, as this case deals with the inviolate rights of Jury Trial (which can not be violated) and void on its' face judgments - there is no time limit – O.C.G.A 9-11-60 (f), and may be attacked in any Court at any time – O.C.G.A 9-11-60(a), and in *Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975),* the Supreme Court held that "[s]tatutes of limitation have no application to [void] judgments, and there can be no bar, estoppel or limitation as to the time when a void judgment may be attacked."

4. The Petitioner requests that a hearing be conducted on this appeal.

5. On Nov. 4th, 2008 Judge Edlein, State Court of Fulton County via judgment transferred this case to the Superior under the presumed authority of O.C.G.A. 9-15-15(d). On May 29, 2009 the Honorable Judge Jerry W. Baxter, Superior Court of Fulton County issued a judgment under the presumed authority of O.C.G.A. 9-15-15(d) granting the Respondents Motion to Dismiss. On January 29, 2010 The Court of Appeals of Georgia issued a paper (unsigned and not for official release) setting aside the Petitioners due process and Jury Trial Rights by failing to enforce them. A motion for reconsideration was submitted exemplifying Jury Trial Rights asserted and the Constitutional prohibitions of judges rendering judgment and again the Court of Appeals refused to meet its' constitutional duty to enforce them, therefore in effect sets aside the inviolate and due process rights of the Petitioner on Feb. 11, 2010.

PART 2
ENUMBERATION OF ERRORS
The State Court of Fulton County

1. The Honorable Judge Edlein, State Court judge erred in rendering a judgment to transfer this case to the Superior Court for seven reasons:
(a). Title 42 Section 1983: In the original complaint, this Petitioner clearly objected (page 2, para. 3) to Superior Court Judge making illegal judgment under O.C.G.A. 9-15-15(d) which includes an action brought under Title 42, Section 1983 of the United States Code, which is exempt from transfer to the Superior court under O.C.G.A.9-15-15(d).
(b). Due Process Errors: The State Court judge violated due process rights (United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]) by assigning a Superior Court judge via judgment to the District Court Administrator. O.C.G.A.9-15-15(d) does not authorize Judge Edlein to make a this judgment – It is the clerk of court that presents the pleading to the court administrator- "but the clerk of court shall file the matter, but shall present the complaint or other initial pleading to the district court administrator for the judicial circuit where the action was filed, to assign to a superior court judge of that circuit." It has further come to the attention of this Petitioner, that the clerk of court refused to present the pleading and the court administrator refused to assign a superior court judge; because a written Jury trial demand had been made and concerns for violations of due process.
(c). Hearing or Waved Hearing: To have a hearing or the waver of a hearing appears to be a question this court will need to decide. The State Court may have erred in not providing the constitutionally mandated hearing (GA Const. Art. 6, Sec. VI, Par. VIII.). The Petitioner in this case has not requested a hearing and has waved his due process right under-

Wilkins v. State, *220 Ga. App. 516*, 518 (3) (*469 SE2d 695*) (1996); Mullins v. State, *224 Ga. App. 218 (1) (480 SE2d 264) (1997)* and Peyton v. Peyton, *236 Ga. 119*, 120-121 (*223 SE2d 96*) (1976). However, the Respondents have a specific right to a hearing under GA Const. Art. 6, Sec. VI, Par. VIII and may have not waved the right as it is a constitutional right.

(d). **Null, Void, and Constitutionally Prohibited Judgment:** Judge Edlein erred in rendering a transfer judgment because a written Jury Trial demand was perfected and not waved by this Petitioner. Judge Edlein has no authority to render a judgment of any kind, her judgment is constitutionally prohibitive (Ga. Const. Art. 1, Sec. I, Par. XI.), rendering it void, and null on its face - *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980).*

(e). **Jury Trial Rights**: Judge Edlein in rendering her judgment violated this Petitioner's inviolate rights of to a Jury Trial as a written demand is perfected- O.C.G.A. 9-11-60(d)(1) and (3), Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment.

(f).**Non-Amendable Defect**: The failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

(g) . **Federal Rights Asserted**: Judge Edlein erred in her "judgment" that this petitioner was challenging under state and not federal rights (footnote 1 of page 1).

(1). This Petitioner clearly uses the term Jury Trial rights in several areas of his original complaint. "Rights" is plural and because I wrote the word

"Rights" it means to include all Jury trial rights: State, Federal, and Ancient!
(2). In the original complaint, this Petitioner clearly objected (page 2, para. 3) "**OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT UNDER O.C.G.A. 9-15-15(d)"** which includes an action brought under Title 42, Section 1983 of the United States Code which exclusively deals with Federal Constitutional Rights.

ENUMBERATION OF ERRORS
The Superior Court of Fulton County

1. OCGA 9-15-15(d) Errors: The Honorable Judge Jerry W. Baxter himself declared he was authorized to make judgments under OCGA 9-15-15(d), but he is not authorized by OCGA 9-15-15(d) to render judgment because OCGA 9-15-15(d) exempts, Title 42, Section 1983 from judgment. Title 42, Section 1983 is obviously asserted (page 2, para. 3) as the Respondents are continuing to violate the Petitioner's due process rights and Jury Trial rights guaranteed by the U.S. Constitution, Federal law, Georgia constitution, and State laws.
2. Void, Null, Unconstitutional Judgment: The Honorable Judge Jerry Baxter in rendering his judgment violated constitutional law prohibiting judgments where an written Jury Trial demand is perfected and not waved – O.C.G.A. 9-11-60(d)(1) and Ga. Const. Art. 1, Sec. I, Par. XI. The Honorable Judge Jerry Baxter's judgment is void and null on it's face - *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980). "A lack of jurisdiction or power in a court entering a judgment always avoids the judgment, ... such action is a mere usurpation of power by the court and may be declared void*

collaterally without any direct proceedings to revise it - Prescott v. Bennett, 50 Ga. 266.

3. **Non-Amendable Defect**: The failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

4. **Judgment Errors**: The Honorable Judge Jerry Baxter made two errors by justifying in his judgment that no motions of objection were made by the Petitioner.

(a). His judgment is now an undisputed error as both the Respondents and Court of Appeals (by adopting judgment) admit openly to this error. If the Honorable Judge Jerry Baxter had actually reviewed the case, he would have noted that the Petitioner had indeed overwhelmingly made strongly-worded multiple objections clearly indicated in the court records. His error was harmful and inconsistent with substantial justice - O.C.G.A 9-11-61.

(b). The Honorable Judge Jerry Baxter lacks the authority to dismiss this case even when a Petitioner fails to object! When a Jury trial is demanded in writing, perfected, and not waved, the failure to object is not one of the circumstances that will wave the inviolate rights - *Manderson &c. v. Gore, 193 Ga. App. 723 (5) (389 SE2d 251) (1989). "The constitutional guarantee of the right to trial by jury refers to two circumstances in which the right may be waived: when no issuable defense is filed and when the parties fail to demand a jury trial."*

5. **Failure to State a Claim**: Judge Baxter made at least eight errors in dismissing this Petitioners complaint for the very vague (unspecified) failure to state a claim for relief.

(a). The respondents in "Answer of the Defendants – First Defense" made the ridiculous assumption that violations of civil and constitutional rights are a failure to make a claim. It is obvious that civil and constitutional rights violations are actionable – O.C.G.A. 9-2-1 (2) "'Civil action' means an action founded on private rights, arising either from contract or tort." See Title 42, Section 1983.
(b). The Respondents in their "memorandum of law in support of motion to dismiss claim" also "Answer of the Defendants – Second Defense" attempt to justify a failure to state a claim by falsely asserting that the Respondents are entitled to Judicial Immunity (page 2. Para. III.A.1.). Georgia Judges (the Respondents) have no judicial immunity as a matter of law - O.C.G.A. 9-15-15. Additionally, the Respondents themselves misinterpret and reversed the intent of Mireles 502 U.S. at 11-12, 112 S. Ct at 288 and others (page 2, last paragraph). The Respondents have no jurisdiction to rendered judgments in their cases because a written Jury Trial Demand is perfected - O.C.G.A. 9-11-60(d)(1) and (3), Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment. Because the Respondents actions are obviously "in the complete absence of all jurisdiction" they are not entitled to immunity under *Mireles 502 U.S. at 11-12, 112 S. Ct at 288* and others. Additionally, the Respondents are not provided immunity in an action brought under Title 42, Section 1983 of the United States Code, even if the action arises out of the performance of the judicial officer's official duties. Additionally O.C.G.A. 9-15-15(a) and (b) require that the Respondents actions to be official – *"The provisions of subsection (a) of this Code section shall apply both with respect to actions brought against a judicial officer in his or*

her official capacity and with respect to actions brought against a judicial officer in his or her individual capacity where the action arises out of the performance of the judicial officer's official duties."
(c). The Respondents in their "Answer of the Defendants – Third Defense" attempt to justify a failure to state a claim by stating, "Plaintiffs claims are barred by the doctrine of res judicata" is a lie! As the Respondents are fully aware of, this case is not barred by the doctrine of res judicata as the UNITED STATES DISTRICT COURT NORTHERN GEORGIA DIVISION Case # 1 08-CV-1489 only dismissed this case due to a lack of jurisdiction. Following this dismissal, this Petitioner filed this case in the correct jurisdiction.
(d). The Respondents in their "Answer of the Defendants – Forth Defense" is merely a denial, which is a matter for a jury to decide.
(e). The Respondents in their "Answer of the Defendants – Fifth Defense" (Items 1-10) attempt to justify a failure to state a claim by pretending jury trial rights don't exist or were not demanded and that the exercise of the Petitioners due process rights are irrelevant.

(1). Para 1. Is a ridiculous statement that this Plaintiffs written Jury Trial demand contains no factual averments. The fact is self-evident, the written demand appears in the complaint. The written Jury Trial demand is itself a factual averment.

(2). Indeed is a legal conclusion and fact based upon the constitution Art. 1, Sec. I, Par. XI. Art. 1, Sec. I, Par. XI itself is a factual averment and is for a jury to determine this legal conclusion as well. Further, "OBJECTION TO SUPERIOR COURT JUDGE MAKING ILLEGAL JUDGEMENT

UNDER O.C.G.A. 9-15-15(d)" is the exercise of the Petitioners due process rights under Title 42, Section 1983 of the United States Code. Itself is a factual averment and is for a jury to determine this legal conclusion.

(3). Indeed is a legal conclusion and fact, Georgia Judges (the Respondents) as a matter of law have no judicial immunity- see O.C.G.A. 9-15-15, a factual averment. It is for a jury to determine this legal conclusion.

(4). This assertion by the Respondents would be humorous if not so serious a violation of rights. The fact that the Respondents ridiculously claim that they lack knowledge or information regarding jury trial demands in their cases where unwaved written jury trial demands clearly appear in those records as a factual averment. The Respondents "laughable" lack knowledge or information regarding jury trial demands can easily be remedied as these cases are to this day readily available! The written Jury Trial demands in these case files are in themselves a factual averment. It is self-evident!

(5). Is simply a denial. This matter is for a jury verdict.

(6). This Petitioner exercised his due process right to object to the Respondents motions. The Petitioners objection is itself a factual averment that appears clearly in the record. It is self-evident!

(7). The Petitioners demand for a jury trial and pre-objections are itself a factual averment that appears clearly in the record. It is self-evident!

(8). The Petitioners non-waver of rights to a jury trial is itself a factual averment that appears clearly in the record. It is self-evident!

(9). The Petitioners stipulation of this case to the trial calendar is itself a factual averment that appears clearly in the record. It is self-evident!

(10). The Respondents justify on the presumption of Judicial immunity - See (3) above.

6. and 7. Due Process and Jury Trial Rights Violations. The Honorable Judge Jerry Baxter in rendering his judgment committed the same offense as the Respondents and violated the Petitioners federal and state due process rights by failing to provide the Jury trial. United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]. Even if (which they are not) there actually was a failure to state a claim or judicial immunity or res judicata it is for a jury to decide such facts and laws – not Judge Baxter - Ga. Const. Art. 1, Sec. I, Par. XI and U.S. Constitution 7th Amendment.

8. The Hearing: The Honorable Judge Jerry Baxter may have erred by failing to hold the constitutionally required hearing to evaluate evidence when an action is taken against a judge - GA Const. Art. 6, Sec. VI, Par. VIII.

ENUMBERATION OF ERRORS
The Court of Appeals

1. (1)The Evidence Supports the Judgment and (3) The Judgment of the Court Below adequately explains the Decision: The Court of Appeals erred when it adopts judgments of the lower courts. As this Court is fully aware of but chosen to ignore; a written jury trial demand is perfected and not waved therefore only a jury can evaluate the evidence (Ga. Const. Art. 1, Sec. I, Par. XI). The judgments made by the lower court judges are null, void, and constitutionally prohibitive (Ga. Const. Art. 1, Sec. I,

Par. XI). The Court of Appeals erred when it attempts to give life to the null, void, and constitutionally prohibitive judgments made by the lower Courts. *"A void judgment is a mere nullity and has no vital force under any consideration or at any time. There is no presumption of validity... Nothing can occur which will give the judgment life, and even if an execution has been issued upon it, it may still be attacked." Wasden v. Rusco Industries, 233 Ga. 439, 444 (211 SE2d 733).* The Court of Appeals not only tried to bring the lower courts null and void judgments to life, but executed them by adopting them as their own judgment. Rendering this judgment of the Court of Appeals itself null, void, and constitutionally prohibitive and there is no time limit as to when they can be attacked - O.C.G.A 9-11-60 (f), O.C.G.A 9-11-60(a), and Wasden v. Rusco Indus., 233 Ga. 439, 445 (211 SE2d 733) (1975).

2. **(2) No Reversible Error:** The Court of Appeals erred stating that no reversible error of law appears in the original judgment. There are actually eight non-amendable defects:

(1). **Violation of Jury Trial Rights is a non-amendable defect.** As the Court of Appeals is fully aware of, but chose to ignore; a written Jury trial demand is perfected, and there is no waver of the inviolate rights. Both the Court of Appeals and the Supreme Court have long held that the failure to provide the required Jury trial is a non-amendable defect! See: O.C.G.A. 9-11-38, and *Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978).*

(2). **Violation of O.C.G.A 9-11-39(a) Is A Non-amendable Defect.** This Petitioner as the Court record clearly shows did not place a written waver stipulation in the trial record; but in fact placed a

written jury trial demand in the Petitioners complaint (page 2, par. 1) and because a hearing was not provided, the opportunity for the Petitioner to make an oral stipulation was impossible. O.C.O.G 9-11-39(a) *"The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, may consent to trial by the court sitting without a jury." Wise, Simpson &c. Assoc. v. Rosser White &c., Inc., 146 Ga. App. 789, 795-796 (247 SE2d 479) (1978) (holding that the failure to conduct a jury trial was a non-amendable defect where no waiver of jury trial appeared of record). See also Coker v. Coker, 251 Ga. 542 (307 SE2d 921) (1983); Scott v. W. S. Badcock Corp., 161 Ga. App. 826 (289 SE2d 769) (1982).*

(3). Violation of Multiple Inviolate Jury Trial Rights. The State, Superior, Appeals Courts in issuing their null, void, and constitutionally prohibitive judgments are violating the Petitioner's multipliable ancient, state, and federal inviolate Jury Trial rights: *State Rights* - Ga. Const. Paragraph XI. ***Right to trial by jury; number of jurors; selection and compensation of jurors.*** *(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party."* O.C.G.A. 9-11-38. The right of trial by jury as declared by the Constitution of the state or as given by a statute of the state shall be preserved to the parties inviolate. *Ancient Rights*- "The common law of force prior to May 14, 1776, was adopted as the law of this State by the act of February 25, 1784, except where modified by statutes or not adjusted to the conditions or system of government existing

here." *Harris v. Powers, 129 Ga. 74 (2) (58 SE 1038, 12 AC 475). See also Alexander v. Dean, 157 Ga. 280, 283 (121 SE 238)." Crowder v. Dept. of State Parks, supra, p. 439.* "Those who emigrated to this country from England brought with them this great privilege `as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power." *Andres v. United States, 333 U.S. 740. Magna Carta of 1215 (39)* "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." *Petition of Right, 1628*: III. And whereas also by the statute called 'The Great Charter of the Liberties of England,' it is declared and enacted, that no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land. *Federal Rights* – The Federal constitution is adopted into law by the G.A. Constitution, "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them" – See GA Const. Art. I, Sec. II, Para. V. The Seventh Amendment to the United States Constitution declares that: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." When a state court is enforcing a federally created right (U.S.

Constitution 7th Amendment and Title 42, Section 1983) as this Supreme Court is called to do, of which the right to trial by jury is a substantial part, the States may not eliminate trial by jury - *Minneapolis & St. Louis R.R. v. Bombolis, 241 U.S. 211 (1916). See also Melancon v. McKeithen, 345 F. Supp. 105 (E.D.La.) (three-judge court), aff'd. per curiam, 409 U.S. 943 (1972); Alexander v. Virginia, 413 U.S. 836 (1973).* Additionally, in this Title 42, Section 1983 action, a jury trial must be provided - 42 USC CHAPTER 21, Sec. 1981a (c).

(4). **Violation of Judicial Precedent.** The lower and Appeals Courts have decided several important state and federal questions in a way that substantially conflicts with the relevant decisions of this Court and of the United States Supreme Court. The Court of Appeals and the lower Courts in violating and refusing to enforce undisputed Jury Trial and due process rights have failed to follow Judicial Precedent, as well established by this Supreme Court. "The decisions of the Supreme Court shall bind all other courts as precedents" - GA Const. Art. 6, Sec.7 Par VI.

(5). **No Hearing Provided.** The lower courts and The Court of Appeals may have violated the constitution by failing to enforce the mandated hearing - GA Const. Art. 6, Sec. VI, Par. VIII.

(6). **Violation of Due Process Rights.** The multiple null, void, and constitutionally prohibited judgments of all the lower courts has violated equal protection and due process rights of the Petitioner. "Both the Georgia and United States Constitutions prohibit the state from depriving any person of life, liberty, or property, without due process of law." United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]. "A party's cause of action is a

property interest that cannot be denied without due process." See - *Nix v. Long Mountain Resources, 262 Ga. 506, 509 (3) (422 SE2d 195) (1992).*

(7). **Null, Void, and Constitutionally Prohibitive Judgments.** The lower courts issued null and void judgments because they lacked jurisdiction over both the person and the subject matter when they violated constitutional law prohibiting judgments where a written Jury trial demand is perfected – O.C.G.A. 9-11-60(d)(1) and Ga. Const. Art. 1, Sec. I, Par. XI. "When a court purports to render a judgment beyond its jurisdiction, the judgment is void. [Cit.] . . . [A] judgment rendered by the court when a Jury verdict is required by statute is void . . . [Cit.]." *McCarthy v. Holloway, 245 Ga. 710, 711 (267 SE2d 4) (1980), citing Canal Ins. Co. v. Cambron, 240 Ga. 708 (242 SE2d 32) (1978) and Greene v. Greene, 76 Ga. App. 225 (45 SE2d 713) (1947).*

(8). **OCGA 9-15-15 (d) Errors.** The Honorable Judge Jerry W. Baxter himself declared he was authorized to make non-hearing judgments under OCGA 9-15-15(d), but he is not authorized by OCGA 9-15-15(d) to do so because a USC 42, Section 1983 was asserted. Judge Edlein violated due process rights (United States Const., amend. XIV, sec. 1; see also Ga. Const., [Art. I, Sec. I, Par. I and II]) by transferring this case to the Superior Court via judgment. Even if OCGA 9-15-15(d) did give the Judges (in light of the written Jury trial demand perfection, constitutionally mandated hearing, and prohibitive judgments) such authorization – it would still be unconstitutional – "Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them" – See GA Const. Art. I, Sec. II, Para. V.

4. Duty Failure: The Court of Appeals failed to enforce the rights of a Jury Trial right – the right is inviolate (Ga. Const. Art. 1, Sec. I, Par. XI). The Court of Appeals by tacitly revoking the rights have failed in their duty to enforce the due process and undisputed Jury trial rights of the Petitioner - "Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." (Ga. Const. Art. 1, Sec. I, Par. II.) However, Judges of the State and Superior Court with the tacit approval of the Court of Appeals have violated duty process and perfected Jury trial rights of this Petitioner right along with Ga. Const. Art. 1, Sec. I, Par. II with their judgments and they continue to do so to this very day!

5. (4) Appellee's Brief: The Court of Appeals erred by adopting the Respondents brief as their judgment. The Respondents brief is an attempt to try this case before Appeals Court judges; where only a Jury can decide such facts and law (Ga. Const. Art. 1, Sec. I, Par. XI). The Respondents brief is devoid of any statue that waves this Petitioners Jury Trial Rights! The waiver of the Jury Trial rights is a matter which is "carefully controlled" by statute - *Manderson &c. v. Gore, 193 Ga. App. 723 (5) (389 SE2d 251) (1989) and Bank South, N.A. v. Howard. S93G1658. (264 Ga. 339) (444 SE2d 799) (1994).* Due process and Jury trial rights are still the law of the land – at least on paper!

6. Erred by Not Correcting Errors: The Court of Appeals erred by not overturning the lower courts judgments because their error resulted in substantial violations of the Petitioners constitutional or statutory, Jury Trial, and due process rights. "When a plaintiff in error brings a case here, he must show

error which has hurt him. ...a case will not be reversed for error in the rejection of evidence unless the error results in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right." *Brown v. Atlanta, 66 Ga. 71* and O.C.G.A 9-11-61. The violation of at least eight (8) constitutional and statutory rights is substantial!

SUMMARY

1. No Remedy at Law: Currently, there are no valid or lawful judgments or verdicts that have provided a remedy for this Petitioners action. This Petitioner has a right for a full and adequate remedy at law - *Ballard v. Mayor of Carrollton 194 Ga. 489 (1942)* and O.C.G.A 9-2-3. It is an error to refuse certiorari when the errors complained of in a petition are sufficient in law - *McCardle v. Fogarty 41 Ga. 626 (1871), Cochran v. City of Rockmart 242 Ga. 732 (1978),* and "When a declaration of right ... and jury trial is not waived, the issues shall be submitted to a jury of 12..." O.C.G.A. 9-4-6.

2. Error: Additionally, It is obvious that the lower Courts have substantially violated this Petitioners due process and Jury Trial rights.

3. Duty: This Supreme Court has the duty to enforce due process and jury trial rights as well - Ga. Const. Art. 1, Sec. I, Par. II. "The first object of any tyrant in Whitehall would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave [391 U.S. 145, 156] a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives." P. Devlin, *Trial by Jury* 164 (1956). "Regardless of whether the object of concern is criminal or civil, the right to trial by jury

"is no mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." *Blakely v. Wash., 542 U.S. 296, 305-306 (2004).*

PART 3
MOTIONS

1. This Petitioner under all laws (as I have done from the beginning) demands a jury trial of 12 persons. The rights of a jury trial are not waved.
2. If they are not considered null and void collaterally, set aside the Fulton County State, Superior Courts, and the Appeals Court's judgments.
3. Send this action back to the lower court to either conduct the required hearing with full lawful due process as required by GA Const. Art. 6, Sec. VII, Par. VIII or conduct the constitutionally required Jury Trial; if the Supreme Court determines that the right to a hearing has been waved by the Respondents due to their failure to request a hearing.
4. The Supreme Court grant other relief as is deemed equitable and just.

/s/Nathan Crisp, CiHM SLT Pro se